Issue C9: Should the agreement include language to address inconsistency between the results obtained by Verizon and by Cavalier from the loop prequalification database, to allow Cavalier to provide xDSL services on loops over 18,000 feet in length, and to adopt pricing for loop conditioning and loops used by Cavalier to provide xDSL service? (§ 11.2 and Exhibit A)

Cavalier's Position:

Cavalier believes that appropriate rates, terms, and conditions should govern the provision of loops over which Cavalier provides xDSL services. Specifically, Verizon's loop prequalification database should return consistent results, Cavalier should be allowed to provision xDSL services over long loops, Verizon should condition loops at reasonable rates, and Verizon should not improperly limit Cavalier's provision of certain types of xDSL service through spectral density masks.

Verizon's Position:

Cavalier's proposed contract language on this issue eviscerates, for no discernible reason, all of Verizon's language regarding the DSL loop pre-qualification process – nearly four pages of the contract that was thoroughly vetted by the Bureau in the *Virginia Arbitration Order*.[16] Cavalier offers no explanation for its wholesale deletions and proposes little alternative language. It has merely proposed to amend some definitions slightly and add two paragraphs that impose upon Verizon various obligations that the Act does not.

Cavalier's apparent rejection of Verizon's loop qualification process is at odds with numerous Commission rulings.[17] In fact, by deleting Section 11.2.12 of Verizon's Proposed Agreement in its entirety, Cavalier has deleted *all* of Verizon's language detailing the loop pre-qualification process, without which Cavalier cannot even obtain the loops necessary to offer

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[16] *See Verizon – AT&T Virginia Agreement* § 11 2 The only difference between the AT&T agreement and Verizon's current proposal to Cavalier are two paragraphs that have been added to address updated technology and any change in legal requirements. Cavalier's generalized comments do not address these paragraphs at all.

[17] *New York § 271 Order* ¶ 140 ("We find that Bell Atlantic demonstrates that it offers nondiscriminatory access to OSS pre-ordering functions associated with determining whether a loop is capable of supporting xDSL advanced technologies."), *Rhode Island § 271 Order* ¶ 61 ("Specifically, we find that Verizon provides competitors with access to all of the same detailed information about the loop that is available to itself, and in the same time frame as any of its personnel could obtain it."); *New Jersey § 271 Order* ¶ 76 fn 204 ("In October 2001, Verizon began to provide access to . [a] new functions[s] . .manual loop qualification. We recently examined [this] new process which [is] the same region-wide, and found [it] to be in compliance with section 271.")

data service to its customers. With respect to Verizon's loop qualification database in Virginia, the Commission confirmed that Verizon provides loop qualification information in a nondiscriminatory manner, consistent with Commission requirements:

> Verizon provides competitive LECs with access to loop qualification information consistent with the requirements of the *UNE Remand Order*. Specifically, we find that Verizon provides competitors with access to all of the same detailed information about the loop that is available to itself and in the same time frame as Verizon personnel obtain it.[18]
>
> * * *
>
> We find, based on the evidence in the record, that Verizon is providing loop qualification information in a nondiscriminatory manner.[19]

The Commission's findings apply equally here, so there is no reason to reject Verizon's loop pre-qualification process.

Aside from its deletions, Cavalier's edits to Verizon's proposed contract language make no sense. For example, Cavalier proposes language requiring Verizon to offer a "2-Wire MVL-Compatible Loop" that is up to 30,000 feet long,[20] but deletes other language referencing the comparable Verizon product with a different name.[21]

Cavalier also asserts that the Agreement should include language "to adopt pricing for loop conditioning and loops used by Cavalier to provide xDSL services."[22] This language should be rejected for three reasons. First, the current rates were included as part of Verizon's affirmative showing in its Virginia 271 case, and the Commission found that they satisfy

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[18] *Virginia § 271 Order* ¶ 29.

[19] *Virginia § 271 Order* ¶ 34.

[20] Cavalier's Proposed Agreement § 11 2 8(a).

[21] Verizon's Proposed Agreement § 11.2.12(A).

[22] Cavalier's Petition, Exhibit A at 2

Verizon's requirements pursuant to Section 271 of the Act.[23] Those rates remain in effect for all carriers who provide DSL services in Virginia. Second, the Bureau recently adopted new loop rates in the *Virginia Arbitration*, and it would serve no purpose for the Bureau to re-examine those rates now. [24] Third, in violation of the procedural order governing this matter, Cavalier has not filed any cost studies that the Bureau could use to set rates. [25]

Other Cavalier edits suggest that Verizon might have to construct new facilities for Cavalier,[26] even though the Act imposes no such requirement on incumbent LECs.[27] In the *Triennial Review* Order, the Commission has now further explained what construction is, and Verizon's Proposed Agreement is fully consistent with that Order. (*See* Verizon's proposed Section 11.7.1, providing that Verizon will comply with all pertinent obligations to provide unbundled network elements.)

Cavalier also proposes that, if no loop is available to serve a prospective DSL customer of Cavalier on a particular day, Verizon should effectively be prevented from serving the customer if a loop becomes available during the next sixty days.[28] This unprecedented demand

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[23] *Virginia § 271 Order* ¶ 93 ("We find that Verizon Virginia's loop rates fall within a range that a reasonable application of TELRIC principles would produce, and, therefore, satisfy the requirements of checklist item two.").

[24] *Virginia Arbitration Pricing Order*.

[25] *See,* Procedures Established For Arbitration of an Interconnection Agreement Between Verizon and Cavalier, DA 03-2733 at 3-4 (Aug. 25, 2003).

[26] Cavalier's Proposed Agreement §§ 11 2 7 – 11 2.8 (deleting Verizon's proposed language stating that "Verizon will not build new copper facilities.").

[27] *Iowa Utilities I* at 813, *aff'd in part and rev'd in part on other grounds, AT&T v Iowa Utilities Board* , 119 S. Ct. 721 (1999) (The Act "requires unbundled access only to an incumbent LECs existing network – not to a yet unbuilt superior one." The Eighth Circuit reaffirmed this holding at *Iowa Utilities Bd v Federal Communications Comm'n*, No. 96-3321 (and consolidated cases), *Iowa Utilities II, motions filed for partial stay of mandate on other grounds* (August 30, 2000).

[28] Cavalier's Proposed § 11.2 13 ("If Cavalier inquires with Verizon about prequalifying or qualifying a loop to provide DSL services to a prospective customer, Verizon responds that no loop is available that can be used to provide DSL services, and Verizon or an affiliate of Verizon provides DSL service to that customer within the next sixty (60) calendar days, then within thirty (30) calendar days after written request by Cavalier and oral or written

ignores the fact that the status of loop facilities changes over time, and that loops that are available one day might not be available the next, through no fault of Verizon. Cavalier's proposal would compel Verizon to treat Cavalier differently from how it treats other carriers – a result that is contrary to the Act. Verizon's proposed language, on the other hand, complies with the Act, as the Commission has repeatedly affirmed, and it adequately addresses Cavalier's legitimate concerns.

For all of these reasons, the Bureau should adopt Verizon's proposed contract language and reject Cavalier's proposed contract language on this issue.

Relevant Authority:

New York § 271 Order

Rhode Island § 271 Order

New Jersey § 271 Order

Virginia § 271 Order

Line Sharing Order

Iowa Utilities I

Iowa Utilities II

Virginia Arbitration Pricing Order

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concurrence by the customer, Verizon shall offer to transfer that customer from the DSL service of Verizon or the affiliate of Verizon to the DSL service of Cavalier, at no cost to Cavalier (including but not limited to non-recurring charges of any type) and at no cost to that customer (including but not limited to early termination liability of any type), with Cavalier to pay the applicable recurring charges going forward for use of the loop to serve that customer.").

Issue C10: Should the agreement be amended to modify use of the term "accessible terminal" (§ 11.2.15.1), restore a provisioning interval (§ 11.2.15.8), modify a use restriction (§ 11.2.15.15), and add queue, CO-connectivity-maps, and improved-field-survey terms from Cavalier's Virginia arbitration petition? (§ 11.2.15)

Cavalier's Position:

Cavalier believes that some modifications to the Commission-approved dark fiber language need to be further modified or eliminated, and that several points of Verizon's dark fiber provisioning should be improved. For improvements, Verizon should have an ordering queue similar to that used for physical collocation space, provide industry-standard maps showing central office connectivity, and improve field surveys.

Verizon's Position:

Under this issue, Cavalier seeks several contract changes that are unnecessary, burdensome, and unjustified by law. Cavalier fails to explain why its proposed modifications are necessary, and they should therefore be rejected.

A. Proposed "Dark Fiber" Definitions

Cavalier's proposed definitions of dark fiber would inappropriately expand Verizon's obligations to make such dark fiber available. Verizon's Proposed Agreement Section 11.2.15.1 defines a "Dark Fiber Loop" as

> two fiber optic strands (a pair) located within a Verizon fiber optic cable sheath between an accessible terminal (such as the fiber distribution frame, or its functional equivalent) located in a Verizon Wire Center and Verizon's accessible terminal located in Verizon's main termination point at the premises of a Customer (such as a fiber patch panel), but that are not connected to any equipment used or that can be used to transmit and receive telecommunications traffic.

Cavalier inexplicably seeks to modify this definition to include fiber pairs "between any other two points where a feeder and distribution plant meet."[29] While copper facilities frequently have feeder and distribution plant, fiber facilities generally do not. Consequently, Cavalier's reference

[29] Cavalier's Proposed Agreement § 11.2.15.1

to fiber "between any other two points where a feeder and distribution plant meet" is vague and ambiguous.

Cavalier also proposes to modify the definition of Dark Fiber Interoffice Facilities ("IOF"). Under Verizon's proposed Section 11.2.15.1, Dark Fiber IOF is available only between Verizon central offices. This is consistent with the *Triennial Review Order* which defines interoffice transmission facilities as those used "for transmission *among incumbent LEC central offices.*"[30] Cavalier attempts to expand this definition to include fiber connecting a Verizon central office and "the central office of a third party with whom Cavalier is interconnected."[31] This proposal is flatly inconsistent with the *Triennial Review Order* and should be rejected.

B. Provisioning Intervals (Section 11.2.15.8)

Section 11.2.15.8 of Verizon's Proposed Agreement states that Verizon will provide Cavalier with access to a dark fiber loop or dark fiber IOF subject to Verizon's standard provisioning interval, which is currently 30 business days, but which is subject to change (for example, through industry-wide collaboratives). By providing all CLECs with a standard provisioning interval for dark fiber, Verizon meets its obligation to treat CLECs in a nondiscriminatory manner, as required by the Act.

Cavalier, on the other hand, proposes that the parties memorialize an interval of 30 business days in the interconnection agreement. Cavalier's proposal locks Verizon into this interval, even though, as noted above, intervals for other CLECs may change because of industry-wide collaboratives.

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[30] *Triennial Review Order* ¶ 361 (emphasis added).

[31] Cavalier's Proposed Agreement § 11 2 15 1

Verizon cannot practically administer a system with different intervals for different CLECs. In addition, under the Virginia Performance Assurance Plan ("PAP"), approved by both the Virginia SCC and by the Commission in the *Virginia § 271 Order*,[32] Verizon must report whether it is meeting certain intervals. If intervals differ by CLEC, Verizon's reporting obligations would become far more costly and complicated.

Therefore, the Bureau should reject Cavalier's costly and inflexible proposal in Section 11.2.15.8.

C. Queue Provisions (Section 11.2.15.4.1)

Cavalier proposes language in Section 11.2.15.4.1 that would require Verizon to place Cavalier's dark fiber inquiries in queue for a period of two years when dark fiber pairs are not presently available. Cavalier's proposal is unduly burdensome and unnecessary. Verizon commits to make reasonable efforts to provide the dark fiber that Cavalier requests. In Proposed Section 11.2.15.4, Verizon proposes that, if a direct route is not available, Verizon will search for alternative routes through intermediate offices in order to fill Cavalier's request.[33] This should greatly reduce the number of dark fiber requests that are rejected in the first place.

Under Cavalier's proposal, by contrast, Verizon would be required to notify Cavalier within 30 days if dark fiber pairs become available along a requested route within two years from Cavalier's initial request. Moreover, Verizon would be required to extend the time for holding a request in queue for an additional two years upon written request from Cavalier. Verizon has no mechanism in place (nor should it be required to fashion one) to hold dark fiber inquiries in queue for any period of time, let alone two to four years.

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[32] On July 18, 2002, the Virginia SCC approved the Performance Assurance Plan for use in Virginia, effective October 1, 2002. *See Virginia PAP Order*, *Virginia § 271 Order*,¶ 198

[33] Verizon's Proposed Agreement § 11.2.15 4

Cavalier erroneously contends that this dark fiber queue would be "similar to that used for physical collocation space."[34] But, the products are so different that Cavalier's attempt to compare them is not valid. Verizon has a limited number of central offices where Verizon has no collocation space available and the queue process would apply. Dark fiber, on the other hand, is nothing like physical collocation space. Verizon has millions of miles of fiber at thousands of sites throughout its network. The status of the fiber changes frequently, and Verizon is constantly adding fiber to its network. It is simply not possible for Verizon to keep track of dark fiber information in the manner that would be required to manage a queue for dark fiber.

Furthermore, Cavalier's proposal for a dark fiber queue, if adopted, could not be limited just to Cavalier, but would be available to any adopting carrier. It would thus require Verizon to establish a sophisticated system for managing a high volume of competing dark fiber requests over time with no guarantee that a CLEC will still want to purchase the dark fiber if and when it does become available. Nothing in the Act requires Verizon to set up this burdensome and unnecessary system. The Bureau should therefore reject this proposal.

D. Connectivity Maps and Joint Field Surveys (Section 11.2.15.5)

In its proposed Section 11.2.15.5, Cavalier asks the Bureau to compel Verizon to enter the cartography business. Under Cavalier's proposal, upon a request from Cavalier, Verizon would be compelled to provide a "connectivity map" for each specified local access and transport area ("LATA") in which both companies are certified to provide service. Such maps would need to (i) show the location of each Verizon central office (including tandems, end offices, and remotes), (ii) indicate in a straight-line, dot-to-dot format, all existing routes for dark fiber connecting any central office with any other central office, and (iii) indicate where Verizon

[34] Cavalier's Petition, Exhibit A at 3.

plans to build fiber in the next three (3) years.[35] If Verizon fails to provide such materials to Cavalier within 10 business days of Cavalier's request, Verizon would apparently be in breach of Cavalier's Proposed Agreement.

Verizon does not have this information. However, upon written request from Cavalier, Verizon will create a wire center fiber layout map based on its existing records for Cavalier's use in preliminary network planning and engineering. These maps show existing fiber routes within the wire center. Before providing these maps, Verizon will provide Cavalier with a written estimate of the time and materials costs that will be charged to Cavalier for creating the maps. These maps will be provided subject to a non-disclosure agreement, which limits disclosure to Cavalier personnel that need the fiber layout information to design Cavalier's network.[36]

These maps, together with other services offered by Verizon, meet Cavalier's need for information about the availability of dark fiber. The maps provide detailed information about dark fiber within each wire center, while Verizon's proposed Section 11.2.15.1 would require Verizon to provide information about alternative routes *between* wire centers. Together, these provisions give Cavalier the information that it needs, and there is no justification for the burdensome fiber layout map that Cavalier seeks. The Bureau should therefore reject Cavalier's proposed Section 11.2.15.5(i).

Cavalier also seeks a joint field survey within 10 business days to: (i) show the availability of dark fiber pairs, (ii) show whether dark fiber pairs are defective, (iii) show whether or not such pairs have been used by Verizon for emergency restoration activity, and (iv)

[35] Cavalier's Proposed Agreement § 11 2 15 5(i)

[36] Verizon's Proposed Agreement § 11.2.15.5(i)

test the transmission characteristics of Verizon dark fiber pairs.[37] The Bureau should reject Cavalier's proposal, which is unnecessary and unduly burdensome. If Cavalier's language is adopted, Verizon's engineers and cable splicers (construction crews) would have to coordinate appointments with Cavalier for the joint survey, thereby limiting their ability to schedule their own work in an efficient manner. Verizon already offers a field survey to verify fiber strand assignment information, and Verizon will provide Cavalier with a report on the field survey's findings. Cavalier has not justified the added complexity and bureaucracy of a joint field survey, and its proposal should be rejected.

Finally, Cavalier proposes that the parties will devise a special means of resolving any disputes about the availability of dark fiber if the maps or field survey process "leave either party with doubt or uncertainty about the availability of dark fiber."[38] There is no need for a dispute resolution mechanism specifically for dark fiber disputes. The dispute resolution procedures included in Section 28.11 of Verizon's Proposed Agreement, to which Cavalier has already agreed, are adequate to handle disputes about the availability of dark fiber. Cavalier's duplicative proposal adds delay, complexity, and bureaucracy, without addressing any identified problems. It should therefore be rejected.

E. Dark Fiber Inquiries (Section 11.2.15.4)

In this section, Cavalier again proposes language that would require Verizon, in response to a dark fiber inquiry, to provide greatly expanded information about dark fiber in Verizon's network, including information that is competitively sensitive. Among other things, Cavalier

[37] Cavalier's Proposed Agreement § 11 2.15 5(ii).

[38] Cavalier's Proposed Agreement § 11 2.15 5

proposes that Verizon should specify "whether fiber is present, but needs to be spliced."[39] This information is not necessary, because, as the Bureau has held, Verizon has no obligation to provide access to dark fiber at splice points,[40] a conclusion that was recently affirmed in the Triennial Review Order.[41] Likewise, there is no basis for Cavalier's request to know the locations of all pedestals, vaults, other intermediate points of connection, and whether dark fiber is available at any of these points. In section 271 proceedings involving Virginia and other states, the Commission has repeatedly held that the dark fiber information that Verizon provides is sufficient.[42] Cavalier's proposals regarding the process for determining the availability of dark fiber are unnecessary and burdensome. The Bureau should therefore reject them.

Relevant Authority:

UNE Remand Order

Local Competition Order

Virginia § 271 Order

Pennsylvania § 271 Order

New Hampshire/Delaware § 271 Order

Virginia Arbitration Order

47 C.F.R. § 51.319

Triennial Review Order

Virginia PAP Proceeding

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[39] Cavalier's Proposed Agreement § 11.2.15 4.

[40] *Virginia Arbitration Order* ¶ 451 ("we find that Verizon's language limiting access to [dark fiber at] hard termination points accords with the Commission's rules.... Verizon casts doubt on the technical feasibility of splice point access when it claims that the practice could 'jeopardize the integrity of Verizon VA's network' and impact the transmission capabilities of the fiber optic facilities.'").

[41] *Triennial Review Order* ¶ 254 ("We find that any point on the loop where technicians can access the cable without removing a splice case constitutes an accessible terminal.")

[42] *See* Virginia *§ 271 Order* ¶¶ 145-147 ("Verizon has demonstrated that it offers dark fiber in Virginia in compliance with the checklist pursuant to a variety of interconnection agreements. Based on the record in this proceeding, we find that Verizon provides dark fiber in Virginia consistent with checklist item 4."); *New Hampshire/Delaware § 271 Order* ¶¶ 118-122

Issue C11: Should the agreement require improved project coordination for special access migrations to UNEs, particularly when an asset or ownership acquisition is involved? (§ 14.6)

Cavalier's Position:

Cavalier believes that mass-migration procedures are needed to improve the transition of customers from a failing or exiting service provider to Cavalier, based on Cavalier's experience with the departures of PICUS, Net2000, and Stickdog from the Virginia marketplace.

Verizon's Position:

Cavalier proposes in Section 14.6 that the Agreement should contain procedures for the transfer of customers to Cavalier from failing local carriers exiting the market. Any such procedures should be considered in the on-going collaborative process established by the Virginia SCC rather than in this two-party arbitration.

Mass-migration issues are not unique to Cavalier. They affect all CLECs who gain customers from a service provider exiting the Virginia market. Recognizing the industry-wide ramifications of this issue in Virginia, Verizon has proposed mass migration guidelines to the Virginia SCC. The Virginia SCC, in turn, has asked the Virginia Collaborative Committee[43] to address the guidelines proposed by Verizon. Cavalier is participating in this process. In light of the Virginia SCC's involvement with and Cavalier's participation in the collaborative proceeding, the Bureau should not adopt unique mass-migration procedures for Cavalier in this proceeding.

Indeed, Cavalier's own proposed language shows why this issue is better resolved in an industry wide forum. Several of Cavalier's proposed terms impose obligations, not just on

[43] The Virginia SCC established the Virginia Collaborative Committee in 2000 to investigate market opening measures in Virginia It serves as an ongoing forum in which CLECs and Verizon can discuss issues of mutual interest

Cavalier and Verizon, but also on the "exiting carrier."[44] It makes no sense to include provisions like these in a two-party interconnection contract that does not even purport to bind the exiting carrier.

Finally, Cavalier's proposal is overbroad. The issue articulated by Cavalier deals only with the migration of special access to unbundled network elements. Its proposed contract language, however, is far broader, dealing with every kind of telecommunications service, including dial-tone line service.

For all these reasons, the Bureau should reject Cavalier's proposed addition of Section 14.6 to the Agreement.

Relevant Authority:

None

[44] *See, e g*, Cavalier's Proposed Section 14 6 4 (imposing an obligation on the exiting carrier to give notice to customers).

Issue C12: Should the agreement address electronic loop provisioning and include a process to address the hot-cut process? (§§ 11.15, 11.16)

Cavalier's Position:

Cavalier believes that the parties should improve the "hot-cut" process where possible, through electronic loop provisioning and through a joint implementation team that addresses particular issues as they arise or become concerns.

Verizon's Position:

Cavalier proposes contract language that would require the parties to "seek methods to improve the current 'hot cut' process."[45] Cavalier's proposed language is unnecessary – there is no hot cut problem in Virginia. The Commission has already found that Verizon's hot cut performance meets Verizon's obligation under the Act.[46] During the first six months of this year, Verizon's on-time hot cut performance in Virginia has continued to meet or exceed the benchmark set by the Virginia SCC. In addition, Verizon's hot cut processes have achieved ISO 9000 quality certification every six months since November 2000.[47]

Cavalier's Proposed Section 11.15 would require the implementation of an electronic loop provisioning ("ELP") process "as early as may be technically, operationally, and commercially feasible." ELP is a method for batch processing of hot cuts, proposed by AT&T in the *Triennial Review*. Verizon has examined ELP and found it to be impractical and extremely expensive. For example, Verizon estimated that an ELP proposal submitted to the Commission in connection with the *Triennial Review* would cost Verizon tens of billions of dollars. The

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[45] Cavalier's Proposed Agreement § 11.15.

[46] *Virginia § 271 Order* ¶ 138 ("We conclude, as did the Verizon Hearing Examiner, that Verizon provides unbundled local loops in accordance with the requirements of Section 271 and our rules. Our conclusion is based on our review of Verizon's performance for all loop types, which include, as in past section 271 orders, voice grade loops, *hot cut provisioning*, xDSL-capable loops, digital loops, high capacity loops, and our review of Verizon's processes for line sharing and line splitting " (emphasis added; citations omitted)).

[47] International Standards Organization ("ISO") is one of the most prestigious quality standards in the world, requiring audits of Verizon's methods and procedures every six months by an independent executive management firm.

Commission recognized the enormous expense associated with implementation of ELP, holding that the record in the *Triennial Review* proceeding "does not support a determination that electronic loop provisioning is currently feasible."[48] Cavalier's proposal should therefore be rejected.

In Section 11.16 of its Proposed Agreement, Cavalier further proposes that a "Joint Implementation Team" be established to overhaul the entire provisioning process for hot cuts and a variety of other services as well. Cavalier, however, does not even attempt to explain why such massive re-engineering is required, either for hot cuts or for any other services. Verizon's hot cut process has been developed with input from the entire industry,[49] and, as noted above, has repeatedly received prestigious quality certifications.

Rather than improving the provisioning process, as Cavalier claims, Cavalier's Joint Implementation Team proposal would have the opposite effect. In many cases, technical and operational issues, testing procedures and schedules, and maintenance problems are resolved most efficiently by people applying their own creative solutions in the field. This informal approach to problem solving is especially important when Verizon introduces new technologies into its network and attempts to roll them out as quickly as possible for consumers and carriers alike. Cavalier's much more rigid approach to deciding how (and, accordingly, when) things will be done would grind these more flexible processes to a halt. Furthermore, by requiring Verizon to treat Cavalier differently than it does other CLECs, Cavalier's "Joint Implementation Team" would undermine industry-wide collaborative efforts and interfere with Verizon's obligation to treat CLECs in a nondiscriminatory manner.

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[48] *Triennial Review Order* ¶ 487, n 1517.

[49] *See, e g , New York §271 Order* ¶ 292 (describing the New York Public Service Commission's oversight of the process).

In short, since there is no hot cut problem in Virginia, the Bureau should reject Cavalier's proposed Sections 11.15 and 11.16.

Relevant Authority:

Virginia Hearing Examiner Report

New York § 271 Order

Virginia § 271 Order

Triennial Review Order

Issue C14: Should the agreement require a limited trial to explore IDLC loop unbundling, as proposed in Cavalier's Virginia arbitration petition? (§ 11.4)

Cavalier's Position:

Cavalier believes that Verizon should unbundled access to loops served on IDLC, through a hairpin/nail-up process like that used by BellSouth and Florida Digital Networks, or through a multiple switch-hosting process like that used internally by Cavalier, with the chosen method depending on the circumstances.

Verizon's Position:

Cavalier's proposal, which would require Verizon to "develop a method of unbundled access to loops or lines served through integrated digital loop carrier,"[50] is burdensome and unnecessary. If Cavalier seeks access to an unbundled loop for a customer served by Integrated Digital Loop Carrier ("IDLC") technology, Verizon will provide Cavalier with a loop in accordance with Verizon's obligations under the Act.

Section 11.4 of Cavalier's Proposed Agreement would require Verizon to define, evaluate, and develop a new type of unbundled IDLC loop that Verizon does not currently offer. Cavalier's proposal purports to require that each party bear its own costs associated with the development of the new loop type.[51] But because Verizon would necessarily perform most of the developmental work, Cavalier's proposal would require Verizon to absorb the vast majority of the substantial up-front development costs.

In its *Virginia § 271 Order*, the Commission recognized that it is impractical for Verizon to unbundle IDLC loops.[52] In its *Triennial Review Order*, however, the Commission stated that, when a customer is served by IDLC, incumbents must provide CLECs with an unbundled loop to

[50] Cavalier's Proposed Agreement § 11 4.1.

[51] Cavalier's Proposed Agreement § 11.4 4.

[52] *Virginia § 271 Order* ¶ 148

the customer, for example by providing a copper loop or a Universal Digital Loop Carrier loop.[53] Verizon has offered to provide such access to Cavalier upon Cavalier's request, and there is, therefore, no need for the trial that Cavalier seeks.

For these reasons, the Bureau should reject Cavalier's proposed language.

Relevant Authority:

Virginia § 271 Order

Triennial Review Order

[53] *Triennial Review Order* ¶ 297

Issue C16: Should a unified engineering and make-ready process apply for pole attachments? (§ 16.0)

Cavalier's Position:

Cavalier believes that a single engineering and make-ready contractor should replace the inefficient and costly system of undergoing multiple rounds of engineering and make-ready work on a single stretch of poles.

Verizon's Position:

Cavalier proposes a complicated and expensive overhaul of a process that Cavalier hardly ever uses and to which no one else in Virginia objects. The Commission has already rejected a similar proposal made by Cavalier in a proceeding involving Virginia Electric and Power Company.[54] The Bureau should do so here as well.

Verizon proposes to continue the same pole attachment process approved by the Virginia SCC and the Commission[55] during the recent review of Verizon's long distance application in Virginia. Cavalier objected to this process in Verizon's section 271 proceedings in Virginia, just as it does here. The Virginia Hearing Examiner rejected Cavalier's claims:

> Cavalier submitted only six applications in the last 18 months, in contrast to the 158,504 pole attachment applications of 58 telecommunications carriers and 160 other entities.[56]
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> * * *
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> Cavalier has failed to provide any evidence that Verizon Virginia's polices and practices regarding pole attachments are discriminatory towards it or other CLECs.[57]

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[54] *Virginia Electric & Power Order*

[55] Virginia § 271 Order ¶ 193 ("based on the evidence in the record, we conclude, as did the Virginia Hearing Examiner, that Verizon demonstrates that it is in compliance with Checklist Item 3 [access to poles, ducts and conduits]. We note that no parties objected to Verizon's compliance with [this] Checklist Item ").

[56] *Virginia Hearing Examiner Report* at 93. Of the six applications for pole attachments that Cavalier did provide, Verizon ultimately discovered that Cavalier already had unauthorized attachments at four of those locations at the time it made its application

[57] *Id* at 95.

Here, once again, although Cavalier has not submitted a single pole attachment application to Verizon in Virginia in the last two years, Cavalier claims the pole attachment process is "inefficient."[58] Cavalier instead wants Verizon to renegotiate virtually every pole licensing agreement with every cable, power, or other utility company with which Verizon shares poles in Virginia.[59] Cavalier's proposal should be rejected for at least three reasons. First, it calls for Verizon to assume a role as project-coordinator of *all* pole owners in Virginia – a role that the Act clearly does not require Verizon to assume. Second, Cavalier has no basis for complaining about the current process for pole attachment because Cavalier has almost never utilized it. Finally, even if a new process governing make-ready work were needed (which it is not), such a process, which would affect all carriers in Virginia, would be best developed in an industry forum or a generic proceeding, and not a two-party arbitration.

The Bureau considered a superficially similar, but fundamentally different, issue in the *Virginia Arbitration Order*, where WorldCom proposed using its own contractors to perform make-ready work on Verizon's pole attachments. There, the Bureau adopted Verizon's language after Verizon agreed to a minor modification:

> that as long as Verizon retained control over the hiring and supervision of contractors, it should hire any otherwise qualified contractor whose hiring would reduce make-ready costs by 25% or more.[60]

Nothing in the Bureau's decision imposed a duty on Verizon to design and implement an entirely new pole attachment process and then bear the burden of convincing all other pole owners in Virginia to agree to it. For these reasons, the Bureau should reject Cavalier's proposed language.

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[58] Cavalier Petition, Exhibit A at 3

[59] See Cavalier's Proposed § 16.2, requiring new license agreements for all utilities owning poles in Virginia Proposed § 16.2.2 makes Verizon "primarily responsible" for implementing this process Verizon currently has approximately 200 pole-sharing license agreements in Virginia.

[60] *Virginia Arbitration Order* ¶ 764.

Relevant Authority:

Virginia Electric & Power Order

Virginia Hearing Examiner Report

Virginia § 271 Order

Virginia Arbitration Order

Issue C17: Should a new process govern proper handling of customer contacts, as proposed by Cavalier with issues 11 and 12 in its Virginia arbitration petition? (§ 18.2)

Cavalier's Position:

Cavalier believes that more stringent controls, and liquidated damages, are needed to address contact with retail customers.

Verizon's Position:

Cavalier's proposed language is unnecessary. Section 18.2 of Verizon's Proposed Agreement appropriately makes each carrier responsible for communications to and from its own customers. Verizon also proposes that, in the event a customer calls the wrong carrier, that carrier will refer the customer to the right carrier in a courteous, non-disparaging manner and at no charge.[61]

Cavalier's proposed language, however, would inappropriately expand Verizon's obligations, by among other things:

1. requiring an investigation and a written report whenever one carrier makes even the flimsiest assertion that the other carrier has inappropriately contacted one of the first carrier's customers,[62] and
2. adding a series of penalties and "bonus" penalties in the event that its proposed provisions are violated in even the most immaterial way.[63]

Cavalier's Petition offers no justification for these meritless provisions, referring only to the arbitration petition filed with the Virginia SCC last year.[64] That petition, however, refers only to "certain problems" without any explanation.[65] None of Verizon's interconnection agreements contain the kind of provisions that Cavalier seeks.

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[61] Verizon's Proposed Agreement § 18.2.3.2.

[62] Cavalier's Proposed Agreement § 18 2 3 4

[63] Cavalier's Proposed Agreement §§ 18 2 6, 18.2.7.

[64] Cavalier's Petition, Exhibit A at 4.

[65] Cavalier's Virginia Petition at 20

Although Cavalier claims in its Virginia Petition that its proposed provisions "more closely track the responsibilities set forth by the FCC's recent CPNI Order,"[66] Cavalier's proposals are not reflected anywhere in the Commission's CPNI Order. In fact, that order primarily provided guidance on the Commission's restrictions on providing sensitive customer information – for example, call records to a carrier's affiliates.[67]

Cavalier proposes that each party "provide mutually agreed referrals" to customers and prospective customers "who inquire[] about the other party's products or services."[68] Verizon, however, should not be responsible for training its personnel about Cavalier's services so that Verizon employees can guide customers to the appropriate contact at Cavalier. That is Cavalier's job.

In addition, Cavalier proposes that carriers not discriminate against each other's products and services,[69] but it does not explain what this language means, and it is far too vague and ambiguous to be included in an interconnection agreement. In any event, the parties' non-discrimination obligations are already spelled out in the Act and the implementing Commission regulations, so Cavalier's general nondiscrimination reference is unnecessary.

Cavalier also proposes that when a current or prospective Cavalier customer – which could be almost anyone – calls Verizon, Verizon should be prohibited from providing any information about Verizon products and services, except for information "specifically requested by the customer."[70] Here again, Cavalier provides no justification for this unworkable

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[66] *Id*

[67] *FCC Customer Proprietary Order*

[68] Cavalier's Proposed Agreement § 18 2.3.4

[69] *Id*

[70] *Id*

restriction, and there is none. Both Verizon and Cavalier should be free to discuss their own products and services whenever someone calls them. Providing consumers with more information, not less, benefits competition.

Finally, Cavalier's Proposed Section 18.2 would place restrictions and penalties on Verizon's prices for Yellow Pages advertising, even though it is a competitive service that the Virginia SCC has declared should not be regulated.[71] Specifically, Cavalier seeks to forbid Verizon from offering prospective customers reduced Yellow Pages advertising rates.[72] Verizon has no such program, but even if it did, it would be entirely lawful under the Virginia SCC's Order making clear that Yellow Pages is not a regulated offering.[73]

For all these reasons, Verizon's Proposed Section 18.2 should be adopted, and Cavalier's contract proposals should be rejected.

Relevant Authority:

FCC Customer Proprietary Order

Virginia SCC Order Approving Optional Regulation Plan

Third Report and Order Docket 96-115

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[71] *Virginia SCC Order Approving Optional Regulation Plan*

[72] Cavalier's Proposed Agreement § 18 2 5

[73] The Commission has suggested that section 251(b)(3) applies to simple Yellow Pages directory listings that provide the same information found in the White Pages directory and for which Verizon does not charge. *Third Report and Order Docket 96-115* ¶ 160. The Commission has never found that Section 251(b)(3) covers rates for Yellow Pages advertising, which is what Cavalier seeks to regulate here